

The Honorable Lauren J. King

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as  
President of the United States, et al.,

Defendants.

No. 2:25-cv-00244-LJK

**NOTICE OF RULEMAKING**

- 1       1. Defendant U.S. Department of Health and Human Services (HHS) hereby provides  
2       notice to the Court of its recent final rule, Patient Protection and Affordable Care Act;  
3       Marketplace Integrity and Affordability, 90 Fed. Reg. 27,074 (June 25, 2025) (the  
4       “Final Rule”).
- 5       2. Among other things, the Final Rule addresses the statutory requirement that issuers of  
6       non-grandfathered individual and small group market health insurance cover “essential  
7       health benefits” (“EHBs”) in their insurance plans. *See id.* at 27,152–166. The statute  
8       requires that the HHS Secretary “ensure that the scope of the essential health benefits ...  
9       is equal to the scope of benefits provided under a typical employer plan, as determined  
10      by the Secretary.” 42 U.S.C. § 18022(b)(2)(A).
- 11     3. The Final Rule states that the Secretary has determined that services defined as  
12      “specified sex-trait modification procedures” are “not typically included in employer-  
13      sponsored plans,” and that health insurance issuers subject to EHB requirements  
14      therefore “may not provide coverage for sex-trait modification as an EHB beginning  
15      with PY 2026.” 90 Fed. Reg. at 27,152. The Final Rule “does not prohibit health plans  
16      from voluntarily covering specified sex-trait modification procedures as non-EHB  
17      consistent with applicable State law, nor does it prohibit States from requiring the  
18      coverage of specified sex-trait modification procedures, subject to the rules related to  
19      State-mandated benefits at § 155.170.” *Id.* at 27,164.
- 20     4. “Specified sex-trait modification procedure” is defined to include “any pharmaceutical  
21      or surgical intervention that is provided for the purpose of attempting to align an  
22      individual’s physical appearance or body with an asserted identity that differs from the  
23      individual’s sex either by: (1) Intentionally disrupting or suppressing the normal  
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1 development of natural biological functions, including primary or secondary sex-based  
2 traits; or (2) Intentionally altering an individual's physical appearance or body,  
3 including amputating, minimizing or destroying primary or secondary sex-based traits  
4 such as the sexual and reproductive organs.” *Id.* at 27,223. The term “does not include  
5 procedures undertaken: (i) To treat a person with a medically verifiable disorder of  
6 sexual development; or (ii) For purposes other than attempting to align an individual's  
7 physical appearance or body with an asserted identity that differs from the individual's  
8 sex.” *Id.* at 27,223–24.

- 9 5. The Final Rule acknowledges the preliminary injunction issued in this case involving  
10 certain provisions of EO 14,168, *Defending Women From Gender Ideology Extremism*  
11 *and Restoring Biological Truth to the Federal Government*, and EO 14,187, *Protecting*  
12 *Children from Chemical and Surgical Mutilation*, and states that the agency acted  
13 “independently of the executive orders because specified sex-trait modification  
14 procedures are not typically included in employer health plans and therefore cannot  
15 legally be covered as EHB.” *Id.* at 27,165; *see also id.* at 27,153. It further states: “We  
16 acknowledge that two courts have issued preliminary injunctions relating to the E.Os  
17 described above, and we do not rely on the enjoined sections of the executive orders in  
18 making this proposal. The finalized policy does not conflict with those preliminary  
19 injunctions because, among other things, it is based on independent legal authority and  
20 reasons and not the enjoined sections of the executive orders. Further, this policy as  
21 finalized will not be effective until PY 2026, and will not be implemented, made  
22 effective, or enforced in contravention of any court orders.” *Id.*

1 6. The Final Rule also states HHS’s intent to notify this Court of the Final Rule “after it  
2 has been published in the Federal Register.” *Id.* at 27,153 n.189; 27,165 n.217.  
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9 DATED: July 11, 2025

Respectfully submitted,

10 BRETT A. SHUMATE  
11 Assistant Attorney General  
Civil Division

12 MICHELLE BENNETT  
13 Assistant Branch Director  
Federal Programs Branch

14 /s/ Christian S. Daniel  
15 CHRISTIAN S. DANIEL (DC Bar No. 1600226)  
16 ROBERT C. BOMBARD (CO Bar No. 45388)  
17 Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L St. NW  
Washington, DC 20005  
18 Tel: (202) 514-5838  
19 Fax: (202) 616-8460  
christian.s.daniel@usdoj.gov  
20 robert.bombard2@usdoj.gov

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2025, I electronically filed the foregoing Notice of Rulemaking using this Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: July 11, 2025

/s/ Christian S. Daniel  
CHRISTIAN S. DANIEL